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No. 97-1099

Supreme Court, U.S.

F I L E D

JAN 6 1998

CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1997

U S WEST, INC.,

Petitioner,

v.

FEDERAL COMMUNICATIONS COMMISSION AND THE
UNITED STATES OF AMERICA,

Respondents.

On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Eighth Circuit

RESPONSE TO U S WEST'S
CONDITIONAL CROSS-PETITION

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QUESTIONS RESTATED

1. Whether the Federal Communications Commission ("FCC") reasonably construed the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, in concluding that "any requesting telecommunications carrier" may obtain access to the incumbent local exchange carriers' ("LECs'") "unbundled network elements" pursuant to Section 251(c)(3), not merely requesting telecommunications carriers that also have network facilities of their own?

2. Whether the FCC reasonably construed the Act in concluding that when a new entrant purchases access to an incumbent LEC's switch as a "network element," it obtains access to, *inter alia*, the "vertical features" of that switch, given that the Act expressly defines "network element" to include all "features, functions and capabilities" of that network element (47 U.S.C. § 153(29))?

3. Whether the FCC reasonably construed Section 251(d)(2) of the Act, which sets forth some of the factors that the FCC must "consider" in determining what network elements must be made available, in concluding that the theoretical possibility that some facilities could be duplicated at a higher cost from another source would not justify foreclosing access to those facilities as LEC network elements?

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AT&T Corp., ACC Corp., America's Carriers Telecommunications Association, Competitive Telecommunications Association, Excel Telecommunications, Inc., General Communications, Inc., Sprint Corporation, Telecommunications Resellers Association, and WorldCom, Inc., petitioners in this proceeding, respectfully submit this response to the cross-petition filed by U S WEST, Inc. ("U S WEST").

The questions raised in U S WEST's cross-petition have already been raised in the prior cross-petitions filed by the Regional Bell Companies and GTE, and U S WEST's cross-petition merely reiterates the same arguments ad-

vanced in those cross-petitions. See Conditional Cross-Petition of Regional Bell Companies for a Writ of Certiorari, *Ameritech Corporation, et al. v. Federal Communications Commission, et al.* (No. 97-1075) (Dec. 24, 1997); Conditional Cross-Petition for Writ of Certiorari, *GTE Midwest Incorporated v. Federal Communications Commission, et al.* (No. 97-1087) (Dec. 30, 1997). Accordingly, the undersigned petitioners respectfully refer the Court to their responses to those cross-petitions for a discussion of the questions presented in U S WEST's cross-petition. See Petitioners' Response to Cross-Petition of Regional Bell Companies 12-22 (addressing questions 1 and 2 in U S WEST's cross-petition); Petitioners' Response to Cross-Petition of GTE 2-3, 14-15 (addressing questions 1 and 3 in U S WEST's cross-petition).

CONCLUSION

For the reasons stated in our responses to the cross-petitions filed by the Regional Bell Companies and GTE, see Response to BOC Cross-Petition 13, Response to GTE Cross-Petition 2-3, the undersigned petitioners do not oppose U S WEST's cross-petition on Question 1. Certiorari on Question 2 and Question 3, however, should be denied.

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